

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

2004 NOV -9 P 3:20

KENT GARVEY, on behalf of himself  
and all others similarly situated,  
Plaintiff

v.

JAMES ARKOOSH, SAMUEL  
BELZBERG, PETER KLEIN and  
DIOMED HOLDINGS, INC.,  
Defendants.

CIVIL ACTION  
NO.: 04-10438RGS

PLAINTIFF'S MOTION FOR LEAVE TO FILE  
AN OPPOSITION TO DEFENDANTS' MOTION TO  
DISMISS IN EXCESS OF THE TWENTY PAGE LIMIT

Pursuant to Federal Rule of Civil Procedure 7(b) and Local Rule 7(b)(4), plaintiff Kent Garvey (hereinafter "Garvey"), hereby respectfully requests this Honorable Court to grant his Motion for Leave to File an Opposition to Defendants' Motion to Dismiss in excess of the twenty (20) page limit. As grounds in support of this Motion, plaintiff states, by and through undersigned counsel, the following:

1. This is a class action lawsuit brought on behalf of those persons who acquired the common stock of Diomed Holdings, Inc. (hereinafter "Diomed") during the period from February 14, 2002 through and including March 21, 2002. Plaintiffs allege violations against all defendants of Section 10b of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. Plaintiffs' claims arise out of the defendants' manipulation of the market price of Diomed stock during the Class Period.

2. Due to the intricate legal issues involved in this case, defendants requested leave to file an extended Motion to Dismiss not to exceed thirty (30) pages.

3. According to the defendants, an extended motion to dismiss was necessary because there were several independent arguments upon which they were going to argue for dismissal of the Amended Complaint.

4. In addition, defendants filed a single consolidated motion on behalf of all the defendants for the convenience of the Court and all parties involved and to promote judicial efficiency.

5. As such, plaintiff Garvey submits that in order to respond to the defendants' several independent arguments and to address each defendant's conduct pertaining to this class action lawsuit in one (1) motion, it is necessary to file an Opposition Motion that is in excess of the twenty (20) pages provided for in Local Rule 7.1(B)(4).

6. Moreover, plaintiff's counsel states that they have conferred with counsel for the defendants pursuant to Local Rule 7.1(A)(2), and defendants' counsel do not oppose this Motion.

WHEREFORE, plaintiff Garvey respectfully requests this Honorable Court to grant this Motion and allow plaintiff to file an Opposition to Defendants' Motion to Dismiss that does not exceed thirty (30) pages in length.

Respectfully submitted,  
KENT GARVEY,  
For himself and on behalf of  
all other similarly situated,  
By his attorneys,

/s/ Tara M. Swartz  
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Lead Counsel for Plaintiffs

LOCAL RULE 7.1 CERTIFICATION

I hereby certify, upon information and belief, that prior to filing the above document, Lead Counsel for Plaintiffs Laurence Rosen conferred with defendants' counsel Charles W. McIntyre and Brian E. Pumphrey, by telephone on November 6, 2004, and attempted in good faith to resolve or narrow the issues contained herein. Further, I certify that prior to filing the above document, I conferred with defendants' counsel Brian E. Pumphrey by telephone and attempted on two occasions to confer with defendants' counsel Charles W. McIntyre by telephone on November 8, 2004, in an attempt in good faith to resolve or narrow the issues contained herein.

/s/ Tara M. Swartz  
Tara M. Swartz